

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
Applications for Consent to the)	MB Docket No. 02-70
Transfer of Control of Licenses)	
Comcast Corporation and AT&T Corp.,)	
Transferors,)	
To)	
AT&T Comcast Corporation, Transferee)	

**Comments of
Communications Workers of America**

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Summary

The merged AT&T Comcast will be the largest multi-channel video programming distribution (MVPD) company in the nation, serving more than 27 million cable customers. It will serve more than 54 percent of all cable television customers in the nation and 37.5 percent of the MVPD market. The merged AT&T Comcast will be twice the size of its next two largest competitors, with all other MVPD providers trailing far behind with single digit market share.

AT&T and Comcast claim that the proposed merger is in the public interest because it will result in more Americans receiving new broadband services faster. In this merger review, the purported public interest benefits must be verifiable, demonstrable, and merger-related. Based on the evidence provided to date to the Commission, the Applicants fail to meet this test. They must provide the Commission with specific deployment plans to demonstrate that post-merger AT&T Comcast will indeed accelerate deployment of broadband networks.

AT&T Broadband in recent years has accumulated a record of non-compliance with its commitments to local franchise authorities regarding system upgrades, build-out of Institutional networks, services to public, educational, and governmental (PEG) access channels, service performance, timely and complete payment of franchise fees, technical requirements, and other issues. AT&T Broadband also has a record of non-compliance with federal labor law. This record raises troubling questions regarding the purported public interest benefits that AT&T and Comcast claim will result from their proposed merger.

Further, the financial structure of the AT&T Comcast merger transaction raises additional

questions as to the ability of the merged entity to deliver on these promises. The new AT&T will be more highly leveraged than either the pre-merger AT&T Corp. or pre-merger Comcast. AT&T Comcast promise \$4 billion in synergies, reduced capital expenditures, and margin improvements after the merger. The Commission must carefully examine whether there are inconsistencies in these commitments--to deliver accelerated deployment of new broadband services *and* reduce operating and capital expenditures by \$4 billion annually—or whether the only way to resolve the inconsistencies will result in rate increases, service cutbacks, employment cuts, and delays in roll-out of new networks and services.

CWA is also concerned that the plans of the merged AT&T Comcast to consolidate customer service and repair call centers will result in poor customer service. Therefore, CWA recommends that the Commission condition merger approval, among any other conditions it may elect to impose, upon service quality reporting requirements.

Table of Contents

Summary	i
I. Introduction	1
II. Legal Framework	5
III. AT&T Has a Record of Exaggerated Promises and Non-Compliance.....	6
A. AT&T Abandons Bundling Just Months After It Claimed in the AT&T/MediaOne Merger Review That Bundling Was a Merger-Related Public Interest Benefit	7
B. AT&T Broadband has a Record of Non-Compliance with Local Franchise Authorities.....	8
C. AT&T Broadband’s Record of Non-Compliance with Labor Laws Casts Further Doubt on the Credibility of its Commitments in This Proceeding.....	16
IV. AT&T Comcast Financial Structure Raises Questions as to Whether AT&T Comcast Will Be Able to Deliver Accelerated Deployment of Broadband Services.....	17
A. The Merged AT&T Comcast Will Be More Highly Leveraged Than Pre-Merger AT&T Or Comcast.....	18
B. Promised Economic Benefits May Lead to Pricing Pressures, Cutbacks in Customer Service and/or Employment Cuts.....	20
V. Service Quality Issues.....	21
VI. Conclusion	24
Appendix – News Articles	25

I. Introduction

The Communications Workers of America (CWA) is a labor organization, with more than 700,000 members employed in wireline and wireless telephony, cable, broadcasting, publishing, airlines, higher education, manufacturing, health care, state and local government, and other public and private sector organizations. CWA represents more than 3,000 employees at AT&T Broadband and more than 250 employees at Comcast. As workers and as consumers, CWA members have an interest in the proposed merger between AT&T and Comcast.

The merged AT&T Comcast will be the largest multi-channel video programming distribution (MVPD) company in the nation, serving more than 27 million cable customers. AT&T Comcast will serve 54 percent of all cable television customers in the nation and 37.5 percent of the MVPD market. (These figures follow Commission rules and count AT&T's 25 percent attributable interest in Time Warner Entertainment, TWE).¹ The new AT&T Comcast will be twice the size of its next two largest competitors (AOL Time Warner and DirecTV). All other MVPD providers trail far behind with single digit market share.²

¹ If AT&T Broadband divests or insulates its 25 percent attributable interest in Time Warner Entertainment (TWE), as it says it will do prior to merger closing, the new AT&T Comcast will have 37.5 percent of all cable television customers in the nation and approximately 30 percent of the MVPD market. In the Matter of Applications for Consent to the Transfer of Control of Licenses Comcast Corporation and AT&T Corp., Transferors, To AT&T Comcast Corporation, Transferee, Applications and Public Interest Statement ("Public Interest Statement"), MB Docket No. 02-70, Feb. 28, 2002, 49-50 and Appendices 6 and 7 (for MVPD customers); AT&T Corporation and Comcast Corporation, SEC form 10-Q for period ending June 30, 2001 (for number of cable subscribers for each company as of 6/30/01) and Federal Communications Commission, In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming Eighth Annual Report ("Eighth Cable Report"), CS Docket No. 01-129, Jan. 14, 2002 (rel), Appendix B-1, 87 (for total number of cable subscribers as of 6/30/01.) For AT&T's stated intention to divest TWE before the closing of the merger, *see* Public Interest Statement, 53-64. For TWE cable subscribers, *see* AOL Time Warner SEC form 10-Q for the period ending June 30, 2001.

² Eighth Cable Report, Appendix B-1, 87.

Numerous consumer organizations, MVPD competitors, equipment manufacturers, Internet Service Providers (ISPs), and policymakers have raised concerns about the anti-competitive impact of the proposed merger in a number of markets. These include the video and broadband distribution markets, the video and broadband programming markets, the bundled video/Internet access (broadband) market, and the equipment market for set-top boxes.³ The Commission must weigh the potential public interest harms that would result in these markets against the potential public interest benefits that the Applicants claim will result from this merger. The Commission has noted in prior merger reviews that as the harms to the public interest become greater, the degree and certainty of the public interest benefits must also increase.⁴ The proposed benefits should be demonstrable, verifiable, and merger-related.

Application of this test to the Applicants' public interest claims in this instant transaction is all the more important because AT&T has been less than straightforward in the past with this Commission regarding merger-related public interest benefits. Just two years ago, in the AT&T/MediaOne merger review, AT&T told this Commission that one of the benefits of its merger with MediaOne would be its ability to provide MediaOne access to AT&T's long distance network, allowing the merged AT&T/MediaOne the ability to offer a bundled package

³ Statement of the Consumer Federation of America, Consumers Union, Center for Digital Democracy on the AT&T Comcast Merger submitted to the Senate Subcommittee on Antitrust, Competition, and Business and Consumer Rights, April 23, 2002 (available at http://www.consumerfed.org/CFA_et_al_ATT-Comcast_testimony.pdf) and Comments of Gary Betty of Earthlink, Mark Haverkate of Wide Open West, Robert Perry of Mitsubishi at the Hearing of the Senate Subcommittee on Antitrust, Competition, and Business and Consumer Rights, "Dominance on the Ground: Cable Competition and the AT&T-Comcast Merger," April 23, 2002. (available at <http://judiciary.senate.gov/hearing.cfm?id=187>).

⁴ In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from MediaOne Group, Inc., Transferor, To AT&T Corp. Transferee, *Memorandum Opinion and Order*, ("AT&T/MediaOne Order"), CS Docket No. 99-251, June 6, 2000 (rel) 154 quoting from SBC/Ameritech Order, 256.

of local and long distance services over its own network, thereby facilitating telephone competition in the local exchange.⁵ Yet just four months after this Commission approved the AT&T/MediaOne merger, AT&T abandoned its bundling strategy and announced its break-up plans.⁶

In this instant transaction, AT&T and Comcast state that the merger will accelerate deployment of cable telephony in Comcast's service areas.⁷ Even if one accepts that this is a *merger-related* benefit, the Commission must go one step further and require that the Applicants provide demonstrable and verifiable evidence of post-merger cable telephony and other infrastructure deployment plans.

AT&T Broadband in recent years has accumulated a record of non-compliance with commitments to local franchise authorities regarding infrastructure deployment, build-out of Institutional networks, services to public, educational, and governmental (PEG) access channels, service performance, timely payment of franchise fees, technical requirements, and other issues. While we recognize that resolution of these issues is the responsibility of local franchise authorities and not this Commission, we believe that this record raises further questions as to AT&T Broadband's credibility regarding its statements to this Commission regarding the public

⁵ AT&T/MediaOne Order, 167 citing Letter from Lorrie M. Marcil, Esq. Sidley & Austin, to Magalie Roman Salas, Secretary, FCC, dated Feb. 22, 2000, Transmittal of Letter from Stephen C. Garabito, General Attorney AT&T, and Susan Eid, Vice President, Federal Relations, MediaOne Group, Inc., to Deborah Lathen, Chief, FCC Cable Services Bureau, dated Feb. 22, 2000.

⁶ "AT&T To Create Family Of Four New Companies; Company To Offer To Exchange AT&T Common Stock For AT&T Wireless Stock," AT&T News Release, Oct. 25, 2000 (available at <http://www.attinsider.com/opinion/bundling/index.asp>). See also Communications Workers of America, "Bungling on Bundling at AT&T" (available at <http://www.attinsider.com/opinion/bundling/index.asp>). http://www.attinsider.com/bungling_bundling.asp).

interest benefits of this instant transaction. Therefore, in these comments we provide the Commission with information regarding AT&T Broadband's non-compliance with franchise, transfer, and settlement agreements with local cable franchise authorities. As more information enters the public record in local franchise transfer proceedings, we will provide updated information to this Commission.

Although AT&T and Comcast claim that the proposed merger will accelerate deployment of new and advanced services, the financial structure of this transaction raises many troubling questions as to the ability of the merged entity to deliver on these promises. The new AT&T Comcast will be more highly leveraged than either the pre-merger AT&T Corp. or pre-merger Comcast. The merged AT&T Comcast will not have access to internal capital resources from AT&T's long distance business, as AT&T does today, and therefore will be more dependent on external funding, raising the cost of capital. Thus, the financial structure of the merged AT&T Comcast may make it difficult for AT&T Comcast to deliver on its claims that post-merger it will accelerate deployment of advanced digital services. Further, the Commission must carefully examine whether the approximately \$4 billion in annual economic benefits that AT&T and Comcast calculate they will achieve from the merger can be achieved absent either significant rates increases, delayed infrastructure investment, reduced service, employment cuts, or a combination of all four.⁸

II. Legal Framework

⁷ Public Interest Statement, 37-42.

⁸ See *infra* SECTION for a more detailed discussion.

Under Sections 214(a) and 310(d) of the Communications Act, the Commission weighs the potential public interest harms of the proposed merger against the potential public interest benefits to insure that, on balance, the transfer serves the public interest, convenience, and necessity.⁹ The Commission's public interest analysis is not limited to a traditional anti-trust review, but also includes the "broad aims of the Communications Act," including opening all communications markets to competition; the preservation and advancement of universal service; and the acceleration of private sector deployment of advanced services. It may also entail assessing whether the merger will affect the quality and diversity of communications services.¹⁰ The Applicants bear the burden of proving the transfer will advance the public interest.¹¹

In its public interest review, the Commission employs a balancing test to determine whether the public interest benefits outweigh the potential public interest harms. As the Commission noted in the AT&T/MediaOne Order and SBC-Ameritech Order, "as the harms to the public interest become greater and more certain, the degree and certainty of the public interest benefits must also increase commensurately in order for us to find that the transaction on balance serves the public interest."¹² The analysis focuses on *demonstrable and verifiable* public interest benefits that could not be achieved if there were no merger (emphasis added).¹³

⁹ AT&T/MediaOne Order, 8. *See also* WorldCom-MCI Order, 13 FCC Rcd at 18030, 8 (1998); Bell Atlantic-NYNEX Order, 12 FCC Rcd at 20000, 29 (1997).

¹⁰ *Id.*, AT&T/MediaOne Order, 11. *See also* SBC-Ameritech Order, 14 FCC Rcd at 14739, 50. WorldCom-MCI Order, 13 FCC Rcd at 18030-31 at 9.

¹¹ SBC-Ameritech Order, 14 FCC Rcd at 14737, 48 (1999); AT&T-TCI Order, 14 FCC Rcd 3169-70, 15 (1999); WorldCom-MCI Order, 13 FCC Rcd at 18031, 10 n.33.

¹² AT&T-MediaOne Order, 154 quoting from SBC-Ameritech Order, 14 FCC Rcd at 14825, 256. *See also* Bell Atlantic-NYNEX Order, 12 FCC Rcd at 20063, 157.

¹³ *Id.*

In this instant transaction, the Applicants must provide to the Commission *demonstrable and verifiable* evidence of the purported public interest benefits of the merger, including detailed deployment plans. The Applicants must demonstrate these benefits could not be achieved absent this merger. Absent such evidence, the Applicants' fail to meet the burden of proof standard that the proposed merger will result in public interest benefits.

III. AT&T Has a Record of Exaggerated Promises and Non-Compliance

In the Public Interest Statement, AT&T and Comcast claim that the proposed merger will “accelerate facilities-based competition in the provision of broadband services, including but not limited to digital video, high-speed Internet service, and local telephony.”¹⁴ AT&T and Comcast claim that the scale and scope economies, cross-fertilization of complementary expertise and assets, and stronger balance sheet of the merged entity will make this possible.¹⁵

As a first matter, AT&T and Comcast fail to demonstrate that these benefits are *merger-related* benefits. Specifically, the Applicants fail to demonstrate that Comcast's entry into cable telephony could not happen independent of the merger. As a second matter, AT&T and Comcast ask the Commission to accept on faith that the merged AT&T Comcast will remain in the cable telephony market and that it will deploy advanced broadband networks and services faster than the two companies would have done without the merger. The Commission should require the Applicants to provide detailed post-merger deployment plans in order to verify these claims.

¹⁴ Public Interest Statement, 2.

¹⁵ *Id.*, 28-29.

**A. AT&T Abandons Bundling Just Months After It Claimed in the
AT&T/MediaOne Merger Review that Bundling Was a Merger-Related Public
Interest Benefit**

AT&T has made exaggerated claims to this Commission before in the context of merger reviews. In the AT&T/MediaOne merger review, AT&T wrote to Commission staff on Feb. 22, 2000, that, among other benefits of that merger, would be the access it would give MediaOne to AT&T's long distance network, enabling the merged company to offer a bundled package of local and long distance services in MediaOne's areas and, thus, allowing it to compete more vigorously against the ILECs in the provision of telephony services.¹⁶ In the AT&T/MediaOne Merger Order, the Commission cited this as one of the public interest benefits of that merger.¹⁷

On June 5, 2000, the Commission approved the AT&T/MediaOne merger, with conditions.¹⁸ Just four months later, on October 25, 2000, AT&T announced its plan to abandon its bundling strategy and to sell its broadband business.¹⁹ This instant transaction in which AT&T is selling its broadband business to Comcast is the direct result of that decision to abandon bundling and marketing of local and long distance telephony provided over AT&T's own networks. Given this past history, in this instant transaction the Commission must ensure that AT&T is not making

¹⁶ AT&T/MediaOne Order, 166 citing Letter from Lorrie M. Marcil, Esq. Sidley & Austin, to Magalie Roman Salas, Secretary, FCC, dated Feb. 22, 2000, Transmittal of Letter from Stephen C. Garabito, General Attorney AT&T, and Susan Eid, Vice President, Federal Relations, MediaOne Group, Inc., to Deborah Lathen, Chief, FCC Cable Services Bureau, dated Feb. 22, 2000.

¹⁷ *Id.*, 166.

¹⁸ AT&T/MediaOne Merger Order.

¹⁹ "AT&T To Create Family Of Four New Companies; Company To Offer To Exchange AT&T Common Stock For AT&T Wireless Stock," AT&T News Release, Oct. 25, 2000 (available at <http://www.attinsider.com/opinion/bundling/index.asp>). See also Communications Workers of America, "Bungling on Bundling at AT&T" (available at <http://www.attinsider.com/opinion/bundling/index.asp>). http://www.attinsider.com/bungling_bundling.asp).

similar false promises to the Commission, only to shift business strategies after merger approval. Therefore, the Commission must insist that AT&T and Comcast provide it with detailed, specific post-merger investment and infrastructure deployment plans.

B. AT&T Broadband Has a Record of Non-Compliance with Local Franchise Authorities

In the few short years that AT&T Broadband has been in the cable business, it has accumulated a disturbing record of non-compliance with contractual obligations to local franchise authorities. While we recognize that resolution of these issues is the responsibility of local franchise authorities and not this Commission, we believe that this record raises further questions as to AT&T Broadband's credibility regarding its statements to this Commission regarding the public interest benefits of this instant transaction. Therefore, in these comments we provide the Commission with information regarding AT&T Broadband's current status of non-compliance with a number of franchise, transfer, and settlement agreements with local cable franchise authorities. This compendium is not complete. As more information is entered into the public record over the next few months in public hearings convened by local franchise authorities on the AT&T Comcast transfer, we will provide updated information to the Commission.

Oakland, California

AT&T Broadband has been the cable provider in Oakland, Ca. since Feb. 16, 1999 when the Oakland City Council approved the transfer of control from TCI to AT&T. As part of the transfer, AT&T signed a Settlement Agreement with the city in which it committed, among other provisions, to rebuild the cable system in the city by March 1, 2001; to guarantee cable service to any requesting resident within a time specified in the agreement; to provide a pilot cable Internet

access program to city libraries; and to provide 20 percent discounts to low-income seniors and people with disabilities.²⁰

In public hearings on the AT&T/Comcast transfer held by the Oakland City Council on April 9, 2002—thirteen months after the rebuild completion deadline—the Oakland City Clerk reported that AT&T Broadband had completed only about 10 percent of the rebuild.²¹ At a March 26, 2002 hearing before the Finance Committee of the Oakland City Council, an AT&T spokesman stated that completion of the rebuild was five years away. (The AT&T spokesman also stated at the hearing that the rebuild completion rate in Oakland is “about even” with that in San Francisco, Ca. and “ahead” of the rebuild completion rate in San Jose, Ca.)²²

CWA represents the cable workers in Oakland. AT&T Broadband stopped construction work in Oakland in October 2000 and moved workers to other cities. The rebuild did not begin again until October 2001, seven months after the completion deadline had passed.

AT&T Broadband may also be in violation of the provision of the Settlement Agreement that requires discounts to senior citizens and people with disabilities. According to the Oakland city clerk, as reported to the Finance Committee of the Oakland City Council in its March 21, 2002 public hearing on the AT&T/Comcast transfer, in its migration from analog to digital cable

²⁰ Settlement Agreement between the City of Oakland and TCI Cablevision of California, Telecommunications, Inc., and AT&T Corp. dated Feb. 16, 1999.

²¹ Oakland City Council meeting, April 9, 2002.

²² Oakland City Council meeting, March 26, 2001.

service, AT&T Broadband moved several premium channels to the more expensive digital service. AT&T Broadband does not provide a discount for the digital service.²³

AT&T Broadband is in violation of the universal service provisions of the Settlement Agreement. There are scattered pockets of East Oakland that have been without cable access for years.²⁴

As more information regarding AT&T Broadband's non-compliance with terms of its franchise and settlement agreements with the city of Oakland become public record, CWA will share this information with this Commission.

Santa Rosa, Rohnert Park, Calistoga, Sonoma County, California

On March 25, 2002, after many months of unsuccessful negotiations to resolve problems, the three California cities of Santa Rosa, Rohnert Park, Calistoga, and the County of Sonoma filed suit in the Superior Court of California against AT&T Broadband for numerous violations of its franchise agreements with these cities, including:

- Failure to meet customer service call-answer standards. According to the complaint, customers reported being placed on hold for thirty minutes and up to an hour or more and 200,000 customers hung up without getting through in the third quarter according to the defendants' own internal records;
- Failure to meet customer service standard for installation and service, which requires maintaining a four-hour window for installation and service appointments;
- Failure to resolve customer complaints in a timely fashion;

²³ Report from City Clerk Regarding AT&T Request for Transfer of Control of Cable Franchise from AT&T to AT&T Comcast to Finance Committee of Oakland, Ca. City Council, March 26, 2002. AT&T Broadband's practice of moving premium channels such as HBO from the basic tier to the more expensive digital service is occurring in jurisdictions around the country. This amounts to a de facto price increase by requiring basic tier customers to subscribe to the more expensive digital service to get channels they used to get as part of the basic tier service.

²⁴ City Attorney John Russo quoted in Jahna Berry, "Crossed Wires: Oakland among several cities taking legal action against AT&T over its services," *The Recorder*, April 12, 2002.

- Failure to upgrade the cable systems as represented to the City Councils and subscribers and as required under the franchise agreements, ordinances, and/or transfer agreements;
- Billing customers for services they did not receive;
- Failure to provide service drops as required by the franchise agreement and ordinances;
- Failure to maintain the integrity and quality of the cable system causing signal interruption;
- Failure to maintain a local office as required under Franchise Agreements;
- Failure to comply with insurance, security deposit and/or letter of credit requirements;
- Broadcasting infomercials on PEG channels without franchisee permission;
- Discontinuing premium channel services to basic tier customers²⁵

Beaverton and Portland, Oregon

CWA represents AT&T Broadband workers in Beaverton, Or., a suburb of Portland. In Beaverton, Or., AT&T Broadband failed to meet the February 2002 deadline to complete the system upgrade. AT&T Broadband laid-off employees responsible for oversight of construction in Feb. 2001, which stopped the rebuild until these construction supervisors were re-hired several months later.

Over the past two years, AT&T Broadband has paid more than \$500,000 in fines to the three Portland area cable commissions for failure to meet call-answer service standards. The fines were levied after AT&T closed local call centers, outsourcing the work to distant call centers in Texas and Ohio. The Metropolitan Commission fined AT&T Broadband \$242,000; the Vancouver, Wash, Clark Co, City/County Cable Commission fined AT&T \$65,000; and the Mt.

²⁵ City of Santa Rosa; County of Sonoma; City of Rohnert Park; City of Calistoga v Westmarc Development Joint Venture; AT&T Corp., a New York Corporation; TCI of East San Fernando Valley, L.P., Superior Court of the State of California, County of Sonoma, Case No. 229584, filed March 25, 2002. *See also* Spencer, soper, "AT&T accused of cheating county cable TV customers," *The Press Democrat*, Mar. 27, 2002.

Hood Cable Commission fined AT&T \$180,000. Finally, AT&T Broadband brought the sales work back in-house to improve customer service.²⁶

In Portland and surrounding Multnomah County, AT&T Broadband is out of compliance with its franchise commitments regarding construction of the Institutional Network. It has not yet met requirements to install, activate, and test new Headend equipment, nor is it providing the interfaces between the Institutional Network and the city of Portland's IRNE system. Nor is AT&T Broadband providing quality signals to the cable access channel.²⁷

Arlington, Texas

According to the April 3, 2002 letter from the Assistant City Attorney of Arlington, Texas to AT&T Broadband, the city has the following noncompliance and other problems with AT&T Broadband:

- Institutional Network. During the AT&T/TCI transfer discussion, AT&T assured the city that its upgrade of the I-NET would alleviate transmission problems. However, there has been no noticeable improvement to the I-NET. AT&T's response to request for service has been poor to nonexistent.
- AT&T is not in compliance with franchise agreement requirements which require I-NET connections to specifically listed City facilities
- AT&T is not in compliance with franchise agreement requirements which require AT&T to maintain a repair force to respond and repair I-Net service within four hours; AT&T's

²⁶ "Cable Workers Get 2nd Chance," *The Oregonian*, Jan. 5, 2002.

²⁷ Letter from David C. Olson, Director, Mt. Hood Cable Regulatory Commission to Ms. Deborah Luppold, Vice President, Franchising and Local Government Relations, AT&T, re Request for Info – AT&T/Comcast "Transfer of Control" Request, dated April 2, 2002 (available at <http://www.cable.ci.portland.or.us/RFI.ATT-ComcastFinal-pdf.pdf>).

response time is rarely within four hours but generally at a minimum takes several days if not weeks;

- AT&T is not in compliance with franchise agreement which requires replacement of coaxial cable electronics with bi-directional amplifiers;
- AT&T is not in compliance with requirements to file an audited annual report and detailed accounting schedules;
- AT&T is not in compliance with requirements to perform annual technical performance tests, and to report the results of these tests to the city;
- AT&T does not file reports on local origination of cable programming with the city, so that the city can monitor compliance with community programming requirements of the 1999 AT&T/TCI transfer agreement
- AT&T does not file quarterly reports with the city on service performance as required by the franchise agreement.

Further, the letter from the Arlington city attorney to AT&T notes, “the number of subscriber complaints continues to be a source of concern to the City.”²⁸

Seattle, Washington

In Seattle, Wa., AT&T Broadband is in violation of the franchise agreement that requires AT&T Broadband to maintain two customer service offices. (The franchise agreement requires one office for every 75,000 customers; AT&T Broadband in Seattle has over 150,000 customers.) In June 2001, AT&T Broadband closed one customer service office. After the city was unable to resolve this franchise violation, the city on Jan. 30, 2002 assessed AT&T Broadband approximately \$5,900 a month in liquidated damages for noncompliance.

²⁸ Letter from David L. Barber, Assistant City Attorney of Arlington, Tx. to Mr. Dick Kirby, Executive Director, AT&T Broadband, re: Request for Information Relative to Merger of AT&T Broadband and Comcast Corporation, dated April 3, 2002.

AT&T Broadband redacted all customer service performance data related to its Internet access service for the fourth quarter of 2001. The city cable office requires provision of this information as part of the customer service reporting to the city. The city's cable office received more than 500 calls from customers of the AT&T Broadband Internet access service who could not get through to the AT&T Broadband office during that period.²⁹

Lakeville, Ma.

In Lakeville, Ma., a small community southeast of Boston, the Board of Selectmen on March 27, 2002 fined AT&T Broadband \$25,000 for breaking its operating agreement with the city. According to the city, AT&T Broadband was out of compliance with customer service call-answer performance standards over the past two years. AT&T failed to provide the city with customer service data during compliance oversight hearings. According to press reports, other communities in southeastern Massachusetts have experienced similar problems with AT&T Broadband's customer service.³⁰

Cambridge, Ma.

Under terms of the Cambridge, Ma. franchise agreement, AT&T Broadband must provide a 10 percent senior citizen discount for basic tier cable service. However, AT&T Broadband has interpreted the franchise agreement to mean that the senior discounted service applies only to the cable service that includes re-transmission of broadcast and public, educational, and

²⁹ CWA telephone interview with Tony Perez, Director, Office of Cable Communications, City of Seattle on April 25, 2002.

³⁰ John Doherty, "Lakeville hits AT&T with maximum fine," *The New Bedford Standard-Times*, Mar. 27, 2002; John Doherty, "AT&T hearing set to conclude tonight," *New Bedford Standard-Times*, Mar. 26, 2002, A12; Robert

governmental channels (PEG), not to basic tier cable service. The city of Cambridge filed a complaint in Superior Court against AT&T Broadband over this. The case is pending.

These examples illustrate a pattern of non-compliance by AT&T Broadband with agreements it has made with local franchise authorities. Given this record, this Commission must require the Applicants to provide demonstrable and verifiable evidence to support the public interest claim that the merger will result in faster deployment of advanced broadband services to more Americans.

Preer, "Cable turnoff: Frustrated communities take TV into own hands," *Boston Globe*, Mar. 29, 2002.

C. AT&T Broadband's Record of Non-Compliance with Labor Laws Casts Further Doubt on the Credibility of its Commitments in This Proceeding

AT&T Broadband also has a record of non-compliance with labor laws.

CWA represents cable workers in Salt Lake City, Provo, and Ogden Utah. The National Labor Relations Board (NLRB), Twenty-Seventh Region, issued a complaint against AT&T Broadband for violation of the National Labor Relations Act (NLRA). The complaint states that in Salt Lake City, Provo, and Ogden, Utah, AT&T Broadband since Oct. 17, 2001 “discriminated against its employees by withholding market adjustment increases from the employees, and since that date continues to fail and refuse to grant these increases.”³¹ The complaint also states that AT&T Broadband since Oct. 17, 2001 has failed to bargain collectively with CWA, failed to continue in effect terms and conditions of employment by unilaterally withholding promised wage increases, and by so doing, has discouraged membership in a labor organization. According to the NLRB complaint, these charges are unfair labor practices within the meaning of the National Labor Relations Act.³²

CWA represents AT&T Broadband workers in Elyria, Oh. The National Labor Relations Board, Region 8 issued a complaint against AT&T Broadband on April 18, 2002 for violation of the National Labor Relations Act. The complaint alleges that AT&T Broadband illegally dismissed

³¹ United States of America before the National Labor Relations Board, Twenty-seventh Region, AT&T Broadband and Communications Workers of America, AFL-CIO, District 7, Complaint and Notice of Hearing, Case 27-CA-17732-1, Jan. 31, 2002.

³² *Id.*

an employee because she engaged in “concerted activities” of union organizing, thereby “discouraging membership in a labor organization” in violation of the NLRA.³³

CWA has multiple cases of unfair labor practices pending against AT&T Broadband in three additional locations (Dallas, Tx., Hialeah, Fl., and Atlanta, Ga.) before the National Labor Relations Board at this time.

IV. AT&T Comcast Financial Structure Raises Questions as to Whether AT&T Comcast Will Be Able to Deliver Accelerated Deployment of Broadband Services

The financial structure of the AT&T Comcast transaction also raises questions as to whether the merged AT&T Comcast will be able to deliver on its claims of post-merger accelerated deployment of broadband services. Contrary to the claims of the Applicants, the merged AT&T Comcast will be more highly leveraged than pre-merger AT&T Corp. and pre-merger Comcast. This may limit investment. Further, AT&T and Comcast project \$4 billion in merger-related economic benefits from lower operating margins, operating synergies, and reductions in capital expenditures. Will the merged AT&T Comcast be able to meet these financial targets *and* accelerate deployment of new broadband services without raising rates or cutting back on customer service and employment? The apparent inconsistencies between these claims makes it all the more important for this Commission to require that AT&T and Comcast provide verifiable and demonstrable evidence of their post-merger investment and deployment plans.

³³ United States before the National Labor Relations Board, Region 8, MediaOne of Ohio, Inc., d/b/a/ AT&T Broadband and Communications Workers of America, AFL-CIO, Complaint and Notice of Hearing, Local 4340, Case No. 8-CA-33038, April 18, 2002.

A. The Merged AT&T Comcast Will Be More Highly Leveraged Than Pre-Merger AT&T Or Comcast

The Applicants claim that the merger will enhance significantly AT&T Broadband's "access to capital required to underwrite an aggressive plan for deploying new broadband services."³⁴ The Applicants state that the merged entity will have a first year combined debt to operating cash flow ratio of less than 5 to 1, representing a substantial improvement over AT&T Broadband's ratio of debt to 2001 operating cash flow of over 8 to 1.³⁵

The Applicants' debt analysis is incomplete and therefore flawed. Pre-merger, AT&T Broadband operates as one business unit within the larger AT&T Corp. As such, AT&T Broadband has been able to finance a portion of its capital expenditures from internal cash generated by other lines of business of AT&T Corp.³⁶ After this instant transaction is completed, this internal source of cash will no longer be available.

As of Dec. 31, 2001, the debt coverage ratio of AT&T Group (which includes AT&T Broadband, AT&T Consumer, and AT&T Business) was 6.8 to 1. At the same date, Comcast's debt coverage ratio was 3.4 to 1. After the merger, the debt coverage ratio will be 2.6 to 1. (The debt coverage ratio is calculated as Earnings Before Interest, Taxes, Depreciation, and

³⁴ Public Interest Statement, 30.

³⁵ *Id.*, 30.

³⁶ In 2001, AT&T Broadband generated \$2.196 billion in cash (EBITDA) and spent \$3.621 billion on capital expenditures. That same year, AT&T consumer generated \$4.929 billion in cash (EBITDA) and spent only \$37 million on capital expenditures; AT&T business generated \$8.447 billion in cash and spent \$4.847 billion on capital expenditure. AT&T Earnings Commentary, Quarterly Update – First Quarter 2002, April 24, 2002.

Amortization (EBITDA) over debt service.) In other words, the merged AT&T Comcast will be more highly leveraged, with less internal capacity to generate earnings to cover its debt.³⁷

As a result, as the Applicants themselves acknowledge in their merger proxy, the merged AT&T Comcast will have less internal capacity to generate cash. Given the merged AT&T Comcast's level of debt, the cost of capital is likely to increase. The Applicants themselves acknowledge in the merger proxy that this may cause delay in deployment plans.

AT&T Comcast may not be able to obtain or obtain on favorable terms the capital necessary to fund the substantial capital expenditures...that are required by its strategy and business plan. *A failure to obtain necessary capital or to obtain necessary capital on favorable terms could have a material adverse effect on AT&T Comcast and result in the delay, change or abandonment of AT&T Comcast's development or expansion plans* (emphasis added)³⁸

The debt rating company Moody's recognizes that the merged AT&T Comcast will have higher capital costs. It downgraded AT&T Broadband's debt rating on Dec. 20, 2001, the day that AT&T and Comcast provided investors with a financial overview of the transaction.³⁹

B. Promised Economic Benefits May Lead to Pricing Pressures or Cutbacks in Customer Service

³⁷ AT&T Corp. 2001 EBITDA of \$15.7 billion divided by \$2.3 billion debt service = 6.8 debt coverage ratio. Comcast 2001 EBITDA of \$2.7 billion divided by \$0.8 billion debt service = 3.4 debt coverage ratio. AT&T Comcast will have net debt of \$28.8 billion (AT&T is transferring \$17.0 billion in debt plus Comcast's \$2.7 billion debt). AT&T Comcast pro-forma EBITDA of \$4.9 billion divided by \$1.9 billion debt service = 2.6 coverage ratio. CWA calculations based on AT&T Earnings Commentary, Quarterly Update – First Quarter 2002, April 24, 2002 and "Comcast Reports Record Revenue of \$9.7 and Operating Cash Flow of \$2.7 Billion For 2001," Feb. 6, 2002.

³⁸ AT&T and Comcast Preliminary Merger Proxy Statement, Risk Factors, Feb. 11, 2002, I-30.

³⁹ "Moody's Lowers Long Term Ratings of AT&T Broadband and Subsidiaries (Senior Unsecured to Baa2 from Baa1), Dec. 20, 2001. AT&T Comcast Investor Presentation, Dec. 20, 2001.

AT&T and Comcast have told this Commission and investors that they anticipate the merger should result in synergies, efficiencies, reduced capital expenditures, and operating margin improvements totaling \$4 billion a year. The \$4 billion is the sum of three different calculations. First, AT&T and Comcast estimate approximately \$1.25 to \$1.95 billion a year in increased Earnings Before Interest, Taxes, Depreciation, and Amortization (EBITDA) synergies and efficiencies five years after the merger.⁴⁰ Second, AT&T and Comcast expect to reduce capital expenditures by an additional \$200–300 million annually.⁴¹ Third, the merging parties project an additional \$1.6 billion in EBITDA margin improvement (based on third quarter 2001 data), over and above the aforementioned synergies and capital expenditure reductions.⁴² AT&T and Comcast state that they will be able to boost AT&T Broadband’s much lower operating margin to that of Comcast’s. CWA has re-calculated the projected margin improvement at \$1.7 billion, using end of year 2001 data. This calculation is based on boosting AT&T Broadband’s 2001 operating margin of 22.4 percent to Comcast’s 2001 operating margin of 39.9 percent.⁴³ AT&T and Comcast have not explained in public documents how they will achieve the projected “margin improvements.” According to AT&T and Comcast, these margin improvements are “in

⁴⁰ AT&T and Comcast calculate these \$1.25 to \$1.95 billion in synergy savings as follows: Programming cost savings \$250-450 million; Operating efficiencies \$200-300 million; National advertising platform \$100-200 million; New products \$100-200 million; Comcast telephony \$600-800 million. Public Interest Statement, 31-35 and Declaration of Robert Pick (“Pick Declaration”), 3-13. See also AT&T Comcast Investor Presentation, Dec. 20, 2001 (available at <http://asp01sea.activate.net/ccbn/t/011220/index.htm>).

⁴¹ “These benefits are not included in the estimated \$1.25 to \$1.95 in EBITDA.” Public Interest Statement, 32-22, fn.55.

⁴² AT&T Comcast Investor Presentation, 29-30. This information inexplicably is not included in the Public Interest Statement or Pick Declaration provided to this Commission.

⁴³ Based on 2001 figures, AT&T Broadband had a 22.4 percent operating margin (\$2.196 EBITDA divided by \$9.799 billion revenue). Comcast had a 39.9% operating margin (\$2.112 billion EBITDA divided by \$5.289 billion revenue). The difference 17.5 percent (39.9 minus 22.4) times \$9.799 billion AT&T 2001 revenue = \$1.7 billion. CWA calculations based on AT&T Earnings Commentary, Quarterly Update – First Quarter 2002, April 24, 2002 and “Comcast Reports Record Revenue of \$9.7 and Operating Cash Flow of \$2.7 Billion For 2001,” Feb. 6, 2002.

addition to synergies”⁴⁴ which have already been identified as reduced programming costs, operating efficiencies, national advertising, new products, rollout of Comcast cable telephony, and reduced capital expenditures. Where then will these improved margins come from? The Commission must verify the source of these “margin improvements” to ensure that they will not come from actions that would not serve the public interest, such as rate hikes, service cuts, or delays in deployment of broadband networks and services.

V. Service Quality Issues

The Commission’s public interest analysis may include an assessment of whether the merger will affect the quality of telecommunications services.⁴⁵ AT&T Comcast have told this Commission that after the merger, AT&T Comcast will consolidate customer care and provisioning, maintenance, and repair centers.⁴⁶ Similarly, after the AT&T purchase of TCI and merger with MediaOne, AT&T consolidated more than 200 call centers into 30.⁴⁷ In the fall of 2002, AT&T outsourced many of the cable telephony customer service and repair functions formerly performed by AT&T union-represented career customer service professionals to an outside vendor with a low-wage, high-turnover human resource model.

The consolidation and outsourcing of customer care and repair/maintenance call centers resulted in a serious decline in quality of service.⁴⁸ Employees in regional call centers are unfamiliar with

⁴⁴ *Id.*, 29.

⁴⁵ WorldCom/MCI Order, 9.

⁴⁶ “...the scale economies created by the merger will foster more efficient use of infrastructure (e.g. by allowing for more efficient use of call centers), and provisioning, repair and maintenance (e.g., by providing local/regional scale to support efficient, centralized truck rolls.) Public Interest Statement, 33. *See also* Testimony of C. Michael Armstrong to Senate Subcommittee on Antitrust, Competition, and Business and Consumer Rights, April 23, 2002. (available at <http://judiciary.senate.gov/hearing.cfm?id=187>).

⁴⁷ AT&T Broadband, “What Have We Done to Achieve the Vision.”

⁴⁸ “Cable Workers Get 2nd Chance,” *The Oregonian*, Jan. 5, 2002.

the local cable territory, and therefore do not schedule truck rolls nor provide answers to service questions with the same efficiency and accuracy that employees who live and work in the local franchise area are able to provide. Further, consolidation and outsourcing make it more difficult for local franchise authorities to monitor and enforce cable companies' compliance with customer service performance standards. An exception in the federal customer service rules permits cable operators to be relieved of having to meet response standards if there are "service conditions...not within the control of the cable operator."⁴⁹ Thus, the cable operator will claim that bad weather anywhere in a cable operator's expanded region exempts the operator from meeting service standards throughout its entire region.

At least one jurisdiction—Beaverton, Or.—insisted that AT&T Broadband re-open its local call center to alleviate customer service problems related to consolidation and outsourcing.⁵⁰

With each cable merger, local jurisdictions find it increasingly difficult, costly, and time consuming to hold large, national, well-financed cable operators to customer service standards. As the examples we have cited in Section IIIA. *supra* illustrate, even large jurisdictions, such as Arlington, Tx., Seattle, Wa., and Portland, Or. have difficulty getting accurate data and then enforcing compliance with customer service performance standards.⁵¹

Therefore, the Commission should require, as a merger condition, that the merged AT&T Comcast provide to the Commission quarterly service performance reports by local franchise

⁴⁹ 47 CFR §76.309.

⁵⁰ *Id.*

area, subject to financial penalty for non-compliance. The quarterly service performance reports should be publicly available on the Commission's web site. Such national reporting would facilitate enforcement by 1) providing local franchise authorities access to comparative data; and 2) providing consumers access to the information. It would also facilitate regulatory oversight to protect consumers against AT&T Comcast cross-subsidization of competitive broadband services by cutting back quality of service provided to customers of its less competitive cable service.⁵² Since many local authorities require such reporting, the administrative burden on the merging parties will be minimal. Further, it would add a measure of regulatory parity, since local telephone companies are required to provide such data to the Commission as part of the ARMIS reports. The Commission should also consider requiring AT&T Comcast to report, and make publicly available, price data by local franchise area.

⁵¹ See Section IIIA. *supra*.

⁵² The Commission requires service quality reporting by incumbent local exchange carriers to prevent cross-subsidization of competitive services by cutting back quality provision of local telephone service, among other reasons.

VI. Conclusion

The Applicants have not yet met the burden of proof to demonstrate that the merger is in the public interest. The past record of AT&T Broadband of non-compliance with commitments and agreements and the financial structure of the transaction raise troubling questions as to whether the Applicants will be able to deliver on their promise to provide new broadband services to more Americans faster.

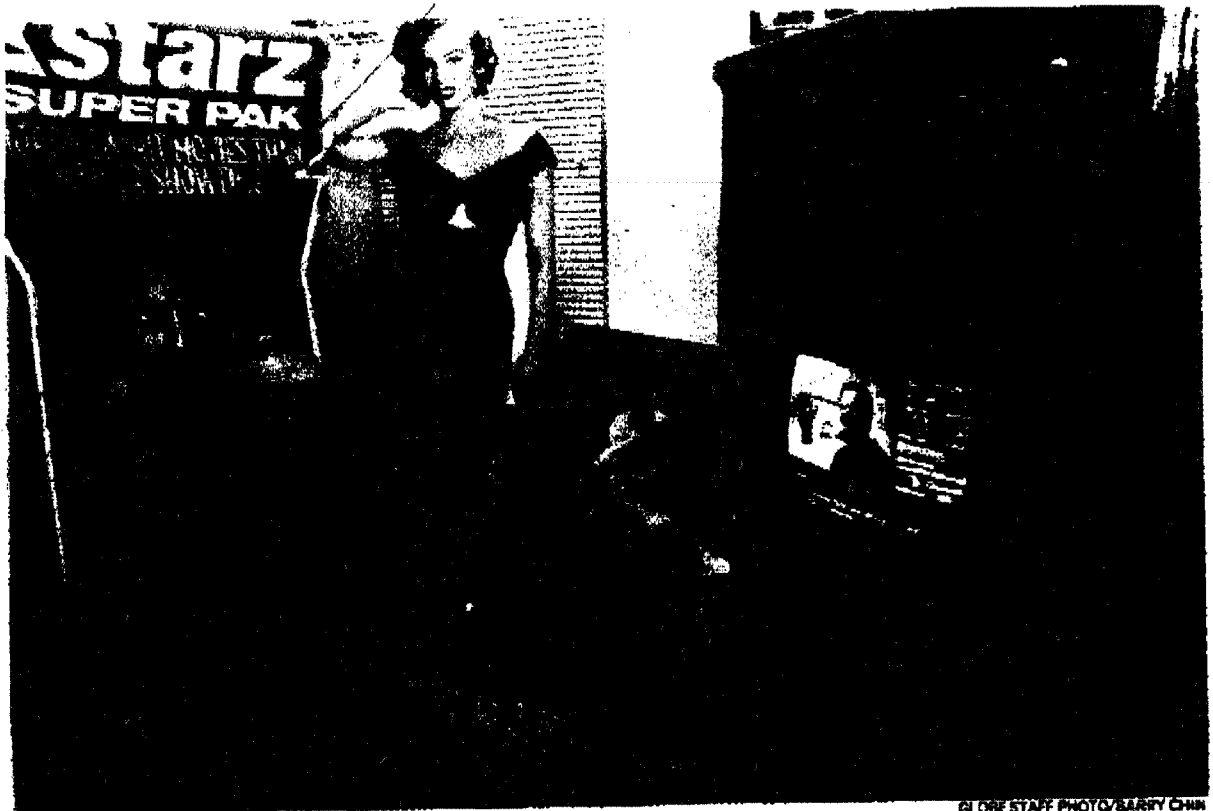
Therefore, the Commission should require AT&T and Comcast to provide detailed infrastructure investment and deployment plans for review to verify the Applicants claims. Second, as a condition of merger, the Commission should require AT&T Comcast to provide to the Commission for public reporting quarterly service quality data by local franchise area.

Respectfully submitted,

George Kohl
Assistant to the President and Director of Research

April 29, 2002

Appendix
News Articles



GLOBE STAFF PHOTO/BARRY CHAN

Walter R. McGrath, general manager of the Braintree Electric Light Department, says he expects to eventually capture 75 percent of the town's 11,500 cable subscribers with a competitive price.

Cable turnoff

Frustrated communities take TV into own hands

By Robert Preer
GLOBE CORRESPONDENT

Escalating rates. Long waits on hold for customer service. Confusing changes in channel lineups.

Local officials unhappy with cable television service in their communities have called public hearings, fined cable companies, and threatened not to renew licenses — all with little effect.

So now, some Massachusetts cities and towns have adopted another strategy: launching their own cable television systems as alternatives to the hometown monopolies.

"We are going to provide it just like we do water and sewer," said Michael J. Gagne, executive administrator in Dartmouth, one of a half-dozen southeastern Massachusetts towns eyeing a regional, government-run cable TV system. "We believe competition is the answer

to improving the market."

Braintree, through its municipal electric department, has been offering cable television service for a little over a year and has already won over more than a third of AT&T Broadband's cable subscribers in town.

Norwood Town Meeting last year authorized its municipal electric department to borrow \$10 million to launch a cable service. Taunton's municipal light department plans to offer a pilot cable television package to about 200 subscribers this spring.

In its town election on Monday, North Attleborough voters will be asked whether they want to start a municipal cable system, while Mansfield voters will decide at Town Meeting in May whether to fund a study of town-run cable. Feasibility studies already are underway in Concord and Belmont.

"The whole genesis for this has been requests from

CABLE TV, Page B7

FRIDAY, MARCH 29, 2002

THE BOSTON GLOBE

Frustrated communities taking cable TV service into own hands

► CABLE
Continued from Page B1

our customers and their frustration with their current provider," said Cindy Angus, spokeswoman for the Taunton Municipal Light Plant.

Because the telecommunications industry is largely deregulated, local officials have little power to force cable companies to change their operations. "Service leaves a lot to be desired," said Taunton City Councilor Barry J. Amaral, an advocate for a city-

owned cable system. "We've had fluctuations in rates, problems with billing. We would like to be able to give discounts to our senior citizens."

The Board of Selectmen in Lakeville, a small town south of Taunton, last week fined AT&T \$25,000 for failing to respond promptly to customer service calls.

AT&T, the state's largest cable company, maintains it is working to correct problems and is undertaking expensive upgrades of ca-

ble systems across New England. Many of the systems AT&T operates in Massachusetts were acquired in the past year and a half from smaller cable companies.

Jennifer Khoury, director of public relations for AT&T Broadband's Northeast region, said municipalities may be making a mistake getting into the fast-changing field of telecommunications.

AT&T Broadband, the largest cable company in the country and a unit of one of the world's biggest corporations, is in a much better

position to develop new offerings, such as video-on-demand, according to AT&T officials. "In most cases we will be offering advanced products first," said Khoury. "It will give us a competitive advantage over the municipalities."

According to the American Public Power Association, slightly fewer than 100 municipalities in the United States offer cable television service. Almost all of these municipal cable systems were built by government-owned electric utilities, which use new or ex-

isting fiber-optic electric lines to transmit the cable signal. Thus, they're able to launch their own cable systems with relatively modest investments.

In Massachusetts, 40 cities and towns have municipal electric departments, which were established a century ago to convert hazardous gas street lights to electricity.

Braintree is so far the only municipality in Massachusetts and one of only a handful in the country to launch a cable service to go

head-to-head with a private provider.

Walter R. McGrath, general manager of Braintree Electric Light Department, said he expects eventually to win over 75 percent of the town's 11,500 cable subscribers, in part by undercutting AT&T's price.

The utility's basic digital service with 152 channels is \$36 a month; AT&T's basic cable package in Braintree is \$44.92 monthly.

AT&T hearing set to conclude tonight

Board could move to fine cable giant

By JOHN DOHERTY
Standard Times staff writer

LAKEVILLE

Tonight, Lakeville selectmen expect to wrap up a precedent-setting hearing with AT&T cable and perhaps fine the media giant.

After two often acrimonious meetings with representatives from AT&T, selectmen on Feb. 26 asked for more details on the company's operations and postponed a vote on whether the company had violated its operating license in town.

The meeting begins tonight at 7 in the Town Office building. If selectmen vote to fine the cable company, they will be the first in a growing number of disgruntled communities to do so.

Central to the debate is whether AT&T has moved to correct response times to calls from Lakeville residents about service.

Both the company and selectmen agree that the company has over the past two years been out of compliance with a portion of the operating agreement demanding the company answer calls within 30 seconds 90 per-

cent of the time.

But the company claims it has corrected those problems, which sprung from a new billing system.

Selectman Chawner Hurd, especially, has been unimpressed with the changes and said he is willing to use the fines, up to \$100 per day for non-compliance, as a way to register other grievances against the company.

AT&T government affairs representative John Maher has argued that the problems are being addressed, but has balked at providing selectmen information that would show those improvements.

Rising bills, channel changes and complaints about repair and service calls have led many Massachusetts communities to complain publicly against AT&T.

Lakeville is one of a handful of SouthCoast towns considering a novel alternative: creating its own system and providing a rival public cable company to compete with AT&T.

JOHN DOHERTY
STANDARD TIMES
3/26/02

Lakeville hits AT&T with maximum fine

By JOHN DOHERTY

Standard-Times staff writer

LAKEVILLE—Frustrated with the cable giant's poor customer service, the selectmen last night fined AT&T Broadband more than \$25,000 for breaking its operating agreement with the town.

In a unanimous vote, the selectmen ended almost two months of hearings with the media company and hinted that more fines are likely.

John Maher, AT&T's director of government affairs, seemed surprised after the vote last night.

"No other town has carried it to this point," he said. "Generally, when we go to communities and explain what's been going on, they accept it."

Lakeville's Cable Committee and the selectmen consider the vote a natural extension of the

growing anger with the cable company in town and throughout the area.

Tonight, representatives from Lakeville will join with representatives from almost a dozen other towns — including Dartmouth, Westport, Fairhaven, Mattapoisett and Acushnet — to consider building a separate, municipally owned cable system to compete with AT&T, which holds a monopoly in this area.

The fines leveled last night were in response to allegations that AT&T had broken part of the local operating agreement it held with the town.

Under the agreement, AT&T customer representatives must respond to a resident's phone call within 30 seconds 90 percent of the time.

Cable commission member

See LAKEVILLE A5

Lakeville: Town fines AT&T

CONTINUED FROM A1

Robert Marshall said there have been many other complaints about the company that mirror the ones heard around Southern Massachusetts: frequent rate hikes, channel changes, spotty Internet service and maddening waits for customer service calls.

The town notified AT&T in November that they were in non-compliance with the operating agreement and that selectmen were scheduling hearings.

If found in non-compliance, the agreement allows for fines of up to \$200 per day. Selectmen last night imposed the maximum fines.

Mr. Maher had no comment on whether the company would pay or appeal the fines to the state's Department of Telecommunications and Energy.

During the hearings, Select-

man Chawner Hurd agreed with AT&T officials that the current deregulated state of telecommunications in Massachusetts allowed the company to do much of what customers have been complaining about.

The fines for the service call violations may be largely symbolic, he said earlier this month, but they were one of the only avenues for local communities to register their frustration with the monopoly.

They also cited a passage in the agreement stipulating AT&T must provide data on the number of customer calls received from Lakeville and the time to answer them.

That information was not provided during the compliance hearings that began in January, and Mr. Hurd hinted that hearings on that violation may also be scheduled.

THE STANDARD-TIMES

NEW BEDFORD, MA

WEDNESDAY, MARCH 27, 2002

CROSSED WIRES

Oakland among several cities taking legal action against AT&T over its services

By JAHNA BERRY
RECORDER STAFF WRITER

There is plenty of static between local cities and cable service provider AT&T Broadband these days, and city attorneys across the Bay Area are looking to the legal system for answers.

Oakland, for example, wants AT&T to pay more than \$10 million in damages for violating a 3-year-old settlement agreement that, among other things, was supposed to wire Oakland residents who don't have access to cable service. Last week, Sonoma County, the city of Santa Rosa and other North Bay cities sued AT&T, and exasperated San Jose city officials will decide this month whether to take another step that could lead to litigation.

Calls to AT&T in-house counsel Michael Hurst were referred to AT&T's San Ramon-based national spokesman, Andrew Johnson, who said city lawsuits and the threatened litigation are nothing new in the cable world.

"It's a well-worn tactic," said Johnson, adding that the company is involved in ongoing talks about customer service issues and alleged violations of franchise agreements.

Also complicating matters is AT&T Broadband's proposed merger with Comcast Corp. Though the merger isn't final, AT&T is eager to transfer its local franchises to Comcast, and that may give local governments the leverage they need to resolve some of their gripes with their cable service.

City franchise agreements typically give cable companies rights that allow them to provide cable service. In exchange, cities usually ask for customer service guarantees or perks such as government channels.

"This is a part of the process. It's standard in the industry," Johnson said.

But Oakland City Attorney John Russo says AT&T "has raised their rates higher than the rate of inflation." Yet, he said, the cable company — which heavily advertises its broadband services — hasn't completed its upgrade of the city's cable system. Nor has it wired scattered pockets in East Oakland that have been without cable access for years, Russo said.

AT&T won't release figures on how many residents don't have cable service, because the company claims that the information is proprietary, said City Clerk Ceda Floyd, who coordinates the cable franchise talks.

"We don't know if it's 50 or 5,000," she said.

Floyd said the company reported that lack of service will be resolved when AT&T upgrades the network in those areas, but that may take at least another year or two for work to commence in that part of the city.

Those problems were supposed to be resolved by a February 1999 settlement agreement. At the time, cable provider TCI needed Oakland's permission to give its merger partner AT&T control of its city franchise agreement.

The City Council was poised to reject TCI's request because TCI had failed to meet several terms of its franchise agreement, said Deputy City Attorney J. Patrick Tang. Eventually the parties signed a pact in which AT&T pledged to lay wiring in Oakland neighborhoods with no cable service, rebuild the cities' aging cable infrastructure with a digital network by March 2001, and give discounts to low-income residents and supplemental security income recipients.

The agreement also says that AT&T must pay damages if it fails to come through on the settlement promises. Some violations, for example, will cost the cable company \$500 a day, according to the agreement.

But today, those East Oakland neighborhoods still don't have service. The March 2001 "rebuild" deadline has come and gone, but only a few neighborhoods have been upgraded to digital service.

"You would have to ask AT&T why they have continually failed to complete the build-out," Russo said.

Oakland and AT&T will meet with a hearing officer, retired Alameda County Judge Richard Hodge, to determine if AT&T broke the pact.

Russo said he hopes the move will prod the telecommunications company to make good on its past promises.

"Things are moving forward," he said.

NORTH BAY LEGAL TACTICS

In Santa Rosa, Assistant City Attorney Caroline Fowler, who worked on the North Bay lawsuit, said she thinks the "climate has changed" since AT&T bought up other companies.

Fowler said North Bay city leaders had more clout with smaller cable companies when problems came up.

"It's a bigger company that everyone is dealing with," she said. These days, "we have had difficulty getting someone on the phone."

Santa Rosa, Rohnert Park, Calistoga and Sonoma County leaders seek an injunction to block AT&T from engaging in alleged unfair business practices.

According to a suit filed March 25 in Sonoma County Superior Court, the cable operator "continues to receive excess profits belonging to cable subscribers" because of "fraudulent business practices."

The suits allege that AT&T has kept residents waiting up to an hour when they call for customer service — instead of 30 seconds to three minutes, which is mandated in franchise agreements; has billed customers for services they didn't get; has failed to upgrade the existing cable infrastructure; and has failed to maintain a local office.

Fowler says that AT&T also has sent notices in local cable bills that virtually force consumers to give up their rights to pursue grievances in court.

In January, U.S. Magistrate Judge Bernard Zimmerman rapped AT&T for similar conduct in *Ting v. AT&T*, C01-02969.

In that suit, a Berkeley resident and other long distance customers sued after AT&T sent them notices that said if they made one long distance call or paid a bill, they would be agreeing to a pact that shielded AT&T from legal liability. AT&T has appealed the case to the Ninth Circuit U.S. Court of Appeals.

Trial Lawyers for Public Justice, which was on the plaintiffs' legal team in *Ting*, is considering whether to initiate a legal challenge on behalf of AT&T's cable customers, said Trial Lawyers attorney F. Paul Bland Jr.

The San Jose City Council will decide this month whether to ask AT&T to formally submit a proposal to renew its cable franchise, which expired in December 2000. Often renewals are negotiated informally, which gives cities and cable companies more flexibility.

"AT&T's service down here is a joke," said San Jose City Attorney J. Richard Doyle. Like other Bay Area cities, the South Bay is still waiting for its promised cable system upgrade.

"San Jose is the high-tech center of the world. We have the old A-B switches. That's 1990s technology," Doyle said.

He declined to elaborate about specific negotiation issues but acknowledged that the City Council's decision has brought the city a step closer to litigation with the telecommunications company.

"That is the practical result," said Doyle. "I don't want to say that litigation is never going to happen."

AT&T has worked hard to comply with the terms of its local franchise agreements, said Johnson, the utility's spokesman, adding that the company provides cable service to about 2 million Bay Area consumers.

About half of AT&T's 128 California agreements require that the local leaders sign off on a "consent to a change in control" — which would essentially transfer the cable franchise to AT&T's successor, Comcast, Johnson said.

He declined to discuss details of the talks in San Jose and Oakland. He also refused to address specific allegations in the North Bay lawsuit. However, Johnson defended the communications company's efforts to upgrade aging cable systems in the Bay Area.

In Oakland alone, the company anticipates investing "tens of millions" in upgrading Oakland's aging cable network, he said, and about 10 neighborhoods have been upgraded so far. He said the company is not merely giving digital cable access but is installing an entirely new fiber-optic network to deliver an array of communications services.

"We are on track with the deadlines of the agreement," Johnson said, noting that obtaining city permits and other bureaucratic processes have caused delays. And, he added, the city is aware that such factors have slowed the project.

Johnson said the city has not taken any action to collect cash penalties listed in the settlement agreement.

Johnson, who worked for AT&T's predecessor, TCI, stressed that cable franchise agreements typically are renewed every 15 to 20 years, and negotiations can be acrimonious and take up to three years.

HIGH PRICE OF NEGOTIATIONS

Plus, he noted, both San Jose and Oakland have hired a pricey Washington, D.C., lawyer, Joseph Van Eaton, as consultant for the cable talks.

San Jose has paid Van Eaton, who is a name partner with Miller & Van Eaton, \$750,000 so far, the AT&T spokesman said. Van Eaton's firm specializes in municipal telecommunications issues.

Calls to Miller & Van Eaton's San Francisco and D.C. offices were not returned.

Both Oakland and San Jose officials confirmed that the firm's attorneys have been retained by the cities.

San Jose's Tom Manheim, a city public outreach manager who is part of the negotiations, said the figure represents how much the city has set aside if it goes through with the protracted formal franchise renewal process.

To date Van Eaton's firm has been paid "far less than that," but Manheim did not know the exact figure.

Floyd, the Oakland city clerk, said the city's contract with Van Eaton — who has been on the case since Oakland's cable franchise expired — is specified "not to exceed \$90,000."

Oakland's Russo said that while it's easy to vilify AT&T, the reasons behind the troubled relationship between cities and cable providers are more complex.

Federal telecommunications rules prevent local governments from imposing certain restrictions on cable rates — and those restrictions can be used as an incentive to get cable companies to adhere to franchise rules, he said.

The recent convergence of cable issues and the multimillion dollar damage claims give Oakland a golden opportunity, Russo said.

"The city is in a position to get a more compliant partner," he said, noting that AT&T is eager to get City Council approval of the transfer to Comcast.

"Now we have something that they want."

Reporter Jahna Berry's e-mail address is jberry@therecorder.com.



**WARM,
SUNNY**

Sebastopol
Night 77 Low: 40

Santa Rosa
Night 69 Low: 40

Bodega Bay
Night 62 Low: 40

Details, Page B6

50 CENTS

The Press

DEMOCRAT

WEDNESDAY, MARCH 27, 2002 • SANTA ROSA, CALIFORNIA

**Chavez
cleans up**
Young Oakland
slugger hopes
to make splash
bating 4th CI



Healdsburg
Funeral home gets
approval to rebuild
downtown B1

Sonoma
City patrol cars
armed with
video cameras B1

AT&T accused of cheating county cable TV customers

SR orders 80-cent cut in cable fees

By **RAMIRO ROSSMANN**
THE PRESS DEMOCRAT

The Santa Rosa City Council on Tuesday ordered AT&T Broadband to lower its monthly basic cable TV fee by 80 cents, saying residents are being overcharged.

On a 7-0 vote, the council told AT&T to drop its monthly fee for basic service from \$16.96 to \$16.16, retroactive to July when the fees

went into place.
No one from AT&T attended the meeting and representatives could not be reached for comment afterward.

AT&T can appeal the decision to the Federal Communications Commission.

If the company agrees to the order, it would cost about \$380,000 to pay back its 50,000 customers in

TURN TO PAGES, PAGE A14

ACCORDING TO THE SUIT

- billed customers for services they never ordered.
- did not meet customer service standards promised in agreements.
- failed to resolve customer complaints in a timely manner.
- forced customers to subscribe to more costly digital cable by removing popular channels from basic service.
- told subscribers they had to waive their right to sue the company in order to continue their service.

SR, RP, Sonoma County, Calistoga file joint suit against company over customer service

By **SPENCER SORER**
THE PRESS DEMOCRAT

Three cities and Sonoma County have filed a lawsuit alleging cable TV provider AT&T Broadband illegally increased its profits by charging customers for services they never received, failing to provide adequate customer service and engaging in several other unfair business practices. The lawsuit, filed Monday in Sono-

ma County Superior Court, seeks an unspecified amount to be reimbursed to local cable subscribers, damages to be paid to the plaintiffs and a court order barring the company from continuing its allegedly unfair business practices.

"We're trying to get their attention," Robert Park City Attorney Betsy Strauss said, adding that the cities and county have been working together for several months on the suit.

Santa Rosa, Robert Park, Calistoga and the county jointly filed the suit against AT&T Broadband's par-

TURN TO PAGE, PAGE A14

AT&T: Suit says customers charged for services never ordered

CONTINUED FROM PAGE A1

ent company, AT&T Corp. The company has long-term contracts to be the exclusive cable provider in all of Sonoma County and in Calistoga.

AT&T Broadband spokesman Andrew Johnson declined comment Tuesday, saying the company has yet to receive the lawsuit.

The company faces several similar actions across the country.

Cities and counties can require cable providers to meet customer service standards, typically measured by answering calls in a set time. But the lawsuit in Sonoma County, as well as similar actions in Illinois and Florida, maintain that AT&T Broadband's customer service response times are woefully inadequate. For example, Santa Rosa's ca-

ble subscribers are supposed to connect via phone with a customer service representative within 30 seconds in 90 percent of all calls, according to the franchise agreement.

But some customers this summer were placed on hold for more than an hour before their calls were answered, and many more hung up in frustration when the could not get a timely answer, Santa Rosa officials said.

According to the suit, the company:

- Billed customers for services, such as pay-per-view movies, they never ordered.
- Did not meet customer service standards outlined in its franchise agreements.
- Failed to resolve customer complaints in a timely manner.
- Forced customers to subscribe to more costly digital ca-

ble service by removing popular channels from the cheaper basic analog cable service.

■ Showed ads on channels designated for public service and educational programs.

■ Told subscribers they had to waive their right to sue the company to continue their service.

The lawsuit is the latest development in an ongoing dispute between the telecommunications giant and Santa Rosa. Earlier this month, City Manager Jeff Kohn found the company violated its contract to be the city's exclusive cable provider, in part by failing to meet customer service standards.

At the time, AT&T Broadband officials didn't dispute the service complaints but said the company has hired more staff to answer calls more quickly. In an unrelated lawsuit,

AT&T Broadband has been accused of falsifying records to make it look like it was meeting customer service standards in Jacksonville, Fla.

A former AT&T Broadband employee sued the company in November, saying she was fired for exposing its alleged practice of falsifying reports. She accused AT&T of giving bogus information to city officials in Jacksonville about the number of people answering customer-service calls, the number of calls answered within 90 seconds and the number of outages.

This story includes information from News Researcher Michele Van Hook and the Associated Press. You can reach Staff Writer Spencer Soper at 521-5257 or ssoper@pressdemocrat.com.

The Oregonian
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CABLE WORKERS GET 2ND CHANCE

Summary: **AT&T Broadband** will open 80 sales representative jobs after a try at outsourcing failed

The local cable company increasingly resembles the soap operas it delivers to loyal viewers.

AT&T Broadband jilted its Beaverton sales and billing call center employees when it fired 100 of them six months ago. The company replaced them with a mysterious stranger thousands of miles away -- the outsourcer.

But the affair wasn't meant to be, and AT&T pined for its old relationship.

So now it's come running back. The local cable company will hire about 80 additional sales representatives at the Beaverton office over the next four to five months. AT&T says the latest chapter in the customer service drama will boost the local economy.

But, like any good soap, there's a plot twist. An antagonist lurks in the shadows.

The cable regulator.

Since contracting out its sales and billing customer service, AT&T has continued struggling to meet local service standards, facing tens of thousands of dollars in fines from the Portland area's three cable commissions. Regulators said that although outsourcing can reduce labor costs, **service quality** suffers because the representatives don't know about the local market.

The commissions require AT&T to answer 90 percent of its calls for cable television orders, billing and repairs within 30 seconds. In the last quarter of 2001, the company failed to do so, although it came a few percentage points from meeting the goal. This comes after nearly \$500,000 in local fines for failing to meet the standards during the past two years.

AT&T spokeswoman Lindy Bartell said the standard is one of many reasons the company decided to stop outsourcing sales calls to West Co. in El Paso, Texas. It will continue to send billing calls to Cincinnati-based Convergys.

AT&T has always handled repair calls in Beaverton, where it employs about 170 people. Since September, it has gradually rehired about 30 service representatives to take customer calls. If the laid-off AT&T employees meet job qualifications, they will receive priority for the 80 newly opened jobs, Bartell said.

"The local management decided it would be best to bring it back," Bartell said. "It's safe to say that this decision reflects all aspects of how we service our customers."

But regulators said AT&T's move reflects the problems companies face when they pay other businesses to handle customer calls.

"Sales seems the hardest to outsource, because you don't know the geography, and you don't know the local promotions," said Sarah Hackett, senior communications analyst for the Metropolitan Area Communications Commission, which oversees cable service in Washington County and the Tualatin Valley. "Outsourcing is a national trend, and this is proof that it didn't work."

West Co., which handled AT&T's sales calls since June, performed poorly in the last quarter of 2001, Hackett said. One week, it answered 32 percent of calls within 30 seconds.

That kind of performance has been expensive for the company:

- * The Metropolitan commission has fined AT&T \$242,000 since May 2000, and the company faces \$40,000 more in fines for not meeting the 90 percent benchmark last quarter.

- * In Vancouver, Wash., and Clark County, the City/County Cable Television Commission fined AT&T \$65,000 in July. Jim Demmon, cable television manager for Vancouver and Clark County, said the commission may discuss additional fines at its Jan. 16 meeting.

- * The Mt. Hood Cable Regulatory Commission, which oversees cable franchises in Multnomah County, has fined AT&T \$180,000 for not meeting the phone-answering standards from the third quarter of 1999 through the third quarter of 2000. David Olson, director of the commission's office, said AT&T could face between \$20,000 and \$30,000 in additional fines.

Norman Thomas, a member of the Mt. Hood commission, said he hopes the move away from outsourcing will improve **service quality** and response times.

"When they had answered the calls, it was doing better," Thomas said.

But customer-service problems aren't necessarily the fault of the contractors, said Brad Cleveland, president and chief executive officer of the Incoming Calls Management Institute in Annapolis, Md. Companies such as AT&T must accurately forecast peak calling times and provide that information to the contractors, he said.

And that complicates quick responses, which are more important than ever in this age of rapid information, Cleveland said.

"The bottom line is that a lot of companies are having trouble keeping up with customer demands," he said. "Customers are just crawling out of their skin. We want the service right now."

Companies aggravate the problem by offering cheap wages and setting low qualifications for customer-service jobs, Cleveland said.

"Can you pay an entry-level wage and with a minimum training have them handle the highest level of customer contact?" Cleveland asked. "That's an industrywide issue."

Regulators speculated **AT&T Broadband** made the switch to improve service before its proposed merger with Comcast, but Bartell said the change is unrelated to the merger announcement.